

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: DAPHNE HUANG
DEPUTY ATTORNEY GENERAL**

DATE: JANUARY 14, 2016

**SUBJECT: ROCKY MOUNTAIN POWER'S NOTICE WITHDRAWING
APPLICATION IN CASE NO. PAC-E-15-17, AND ADVISORY LETTER**

On December 31, 2015, Rocky Mountain Power filed an Application to approve the disposition of certain facilities pursuant to a purchase and transfer agreement with Navajo Tribal Utility Authority. On January 12, 2016, Rocky Mountain filed a Notice of Withdrawal of the Application, and Advisory Letter.

THE APPLICATION, WITHDRAWAL, AND ADVISORY LETTER

Rocky Mountain Power provides electric service to certain customers within the Navajo Nation in San Juan County, Utah, with consent of the Nation and pursuant to Rocky Mountain's tariffs and regulations on file with and approved by the Public Service Commission of Utah. Application at 2. In 1959, the Nation created the Navajo Tribal Utility Authority (NTUA), and authorized it to provide utility service throughout the Nation. *Id.* at 3. Rocky Mountain continues to provide electric service to customers within the Nation. *Id.* at 4.

A few times since creation of NTUA, and most recently in 2009, NTUA has approached Rocky Mountain about acquiring the Company's facilities used to provide service to customers within the Nation. *Id.* NTUA and Rocky Mountain entered into a Purchase and Transfer Agreement on December 4, 2013, but encountered delays in closing the agreement. *Id.* at 4-5. The parties entered into the First Amendment to the Agreement, effective March 4, 2015, and executed a Second Amendment to the Agreement on December 2, 2015. *Id.* at 6-7.

On December 31, 2015, Rocky Mountain filed its Application seeking this Commission's approval of the Agreement, citing *Idaho Code* § 61-328. The Application indicates the Company will also submit approval filings to the Public Service Commission of

Utah, the Wyoming Public Service Commission, and the Oregon Public Utility Commission, and that it will file an advice letter in California. *Id.* at 8.

On January 12, 2016, Rocky Mountain filed a Notice of Withdrawal and Replacement with an Advisory Letter, summarizing key information from its Application regarding the Purchase and Transfer Agreement. Notice and Advice. The Letter's stated purpose is to "notify[] the Commission of the Company's intent to dispose of certain facilities in Utah to the [NTUA]."

STAFF RECOMMENDATION

Rocky Mountain's Application cited *Idaho Code* § 61-328, regarding electric utilities and the sale of property. Application at 5. That provision states:

No electric public utility . . . owning, controlling or operating any property located **in this state** which is used in the generation, transmission, distribution or supply of electric power and energy to the public . . . shall merge, sell, lease, assign or transfer, directly or indirectly . . . any such property or interest therein . . . except when authorized to do so by order of the public utilities commission.

Idaho Code § 61-328(1) (emphasis added). Staff notes that the Agreement between Rocky Mountain and NTUA involves the purchase and transfer of property located entirely in Utah. Application at 2, 5. Because none of the property at issue in the Agreement is located in Idaho, § 61-328 does not apply. Section 61-328 does not require Rocky Mountain to obtain approval of its Agreement from the Idaho Public Utilities Commission.

Staff believes that withdrawal of Rocky Mountain's Application is appropriate. Under Procedural Rule 68, Rocky Mountain's Notice of Withdrawal is effective 14 days after filing unless otherwise ordered by the Commission. IDAPA 31.01.01.068. Thus, Staff recommends that the Commission allow the Notice to take effect on January 26, 2016.

Staff also observes that utilities are required to give notice to the Commission of any change in rate, or any change in any "contract relating to or affecting any rate" *Idaho Code* § 61-307. Because Rocky Mountain's Agreement with NTUA conceivably impacts rates in Idaho, § 61-307 could be construed to require Rocky Mountain to file a Notice of its Agreement to this Commission. Staff believes the potential impact of the Agreement is relatively minor and best addressed as part of a future rate case, rather than through a separate case. Staff thus recommends that the Commission acknowledge the Company's Advisory Letter regarding its Agreement with NTUA, without further action at this time.

COMMISSION DECISION

1. Does the Commission wish to allow Rocky Mountain's Notice of Withdrawal to take effect under Rule 68 on January 26, 2016?
2. Does the Commission wish to acknowledge Rocky Mountain's Advisory Letter regarding its Agreement with NTUA without further action at this time?

/s/ *Daphne Huang*
Daphne Huang
Deputy Attorney General

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